



## **A G E N D A**

### **General Plan/LCP Implementation Committee**

**April 15, 2009**

**3:30 p.m.**

**City Council Chambers**

1. Approve Action Minutes from March 25, 2009  
Attachment No. 1 3:30-3:35pm
2. Draft Zoning Code Review
  - A. Adult Business Regulations, Section 20.60.020 – Update from staff
  - B. Performance Guarantees (Revised), Section 20.68.060 – Provide comments on revised regulations (attached)
  - C. Recovery of Costs (Revised), Section 20.82.060 – Provide comments on revised regulations (attached)
  - D. Environmental Study Areas – Update from staff
  - E. Canyon Development Standards – Review revised standards and provide comments on regulations and exhibits (attached)
  - F. Revised Zoning Code Schedule – Provide comments to staff on revised schedule.(attached)

Attachment No. 2 3:35-5:45pm
3. Items for Future Agenda 5:45-5:50pm
4. Public Comments on non-agenda items 5:50-6:00pm
5. Adjourn to April 29, 2009, 3:30 p.m.

**Attachments:**

1. Draft action minutes from March 25, 2009
2. Draft Zoning Code Review support material

## ATTACHMENT NO. 1

Draft Action Minutes From March 25, 2009



## CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

### DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, March 25, 2009**

#### Members Present:

X	Ed Selich, Mayor, Chairman
X	Leslie Daigle, Council Member
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

#### Advisory Group Members Present:

X	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
	Brion Jeannette
	Don Krotee
X	Todd Schooler
	Kevin Weeda
	Dennis Wood

#### Staff Representatives:

	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
	Aaron Harp, City Attorney
X	Patrick Alford, Senior Planner
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Dan Campagnolo, Planning Systems Administrator
X	Makana Nova, Assistant Planner
X	Fern Nueno, Assistant Planner
	Melinda Whelan, Assistant Planner

E = Excused Absence

## Committee Actions

### 1. Agenda Item No. 1 – Approval of minutes as corrected of March 18, 2008.

**Action:** Committee approved draft minutes.

**Vote:** Consensus

### 2. Agenda Item No. 2. – Draft Zoning Code Review

#### • Review of Bluff Development Regulations

**Action:** The Committee discussed the proposed regulations regarding Development on Bluffs and Canyons. The Committee was provided with slides from the previous photographic presentation showing the proposed Development Areas for the various geographic areas identified that contain bluffs. Development areas for the coastal canyons (Buck Gully and Morning Canyon) were not discussed.

The Committee and Advisory Members discussed and directed staff to:

- clearly define *development area*
- do not use *generally depicted* to describe a development area
- provide consistency of terminology throughout the Zoning regulations
- Cliff Drive and Kings Road
  - Reexamine accessory structures and recommend regulations for structures in these areas. Develop a general provision in the Zoning regulations for retaining walls.
- Kings Place
  - Re-evaluate line to allow an equitable development area (horizontally) for all properties. Create a principal structures and accessory structures line. Determine which accessory structures should be allowed beyond the principal development area line.
- Irvine Terrace
  - Determine which accessory structures to allow below the principal development area line.
- Avocado Area
  - Use the 50-foot contour line across 411 Avocado Avenue then cut down to the 35-foot contour line across 401 Avocado Avenue.
- Pacific Drive

- Allow the Megonigal residence to be addressed through the current EIR process since the properties below are already developed.
- Carnation
  - Clean up the colors on the presentation slides so the oblique lines do not appear as if the development line occurs at the same elevation contour across the entire block.
- Breakers/Ocean
  - Add a building height restriction at the 52' contour
  - 2495 Ocean Blvd. - add a provision restricting expansion below its current extent. Determine whether structures should be permitted to cantilever beyond this point.
  - For 3207-3309 Ocean Blvd., allow accessory structures at the base of the bluff along Breakers and allow limited accessory structures throughout the middle section of the bluff. Determine which accessory structures to allow in each zone.
  - Use the proposed standard for 3817 through 3431 Ocean Blvd.
- Shorecliffs & Cameo Shores
  - Develop the standard so the principal structure line overrules the accessory structure line
  - Determine which accessory structures to permit in each zone of development
  - Yellow line – allow foundation encroachments
  - Red line – allow on grade structures
  - White line -

**Vote:** Consensus, except that Commissioner Hawkins objected to the accessory structure encroachment direction in the Shorecliffs and Cameo Shores area.

### 3. Agenda Item No. 3 – Items for future agenda

**Action:** Cancel meeting for April 1st and continue discussion on Agenda Item 2B, Bluff Development Regulations on April 15<sup>th</sup>.

**Vote:** Consensus

### 4. Agenda Item No. 5 - Public Comments on non-agenda items

None

**Meeting Adjourned 6:00 p.m.**

## ATTACHMENT NO. 2

### Draft Zoning Code Review

## 20.68.060 Performance Guarantees

### A. Deposit of security.

1. ~~As a condition of approval of a Coastal Development Permit, Conditional Use Permit, Limited Term Perm, Minor Use Permit, Modification Permit, Planned Development Permit, or Variance, or upon a finding that the City's health, safety, and welfare warrant, the review authority may require the execution of a covenant to deposit security in a reasonable amount to ensure the faithful performance of one or more of the conditions of approval of the permit in the event that the applicant fails to perform.~~
1. If the review authority finds that the issuance of a permit or other approval is reasonably likely to have a direct adverse impact on the health, safety, or welfare of the public if the condition(s) is not performed, the review authority may impose, as a condition of approval, a requirement that the applicant deposit security in an amount sufficient to ensure the faithful performance of the condition(s).
2. ~~The security shall, as required by law or otherwise at the option of the City, be in the form of cash, a certified or cashier's check, or a performance bond executed by the applicant and a corporate surety authorized to do business in California and approved by the City.~~
2. The security shall be in the form of cash, a certified or cashier's check, or a performance bond. If the applicant elects to fulfill the condition by providing a performance bond, the performance bond shall be issued by a surety currently authorized by the Insurance Commissioner to transact business in the State of California. The surety shall be of a financial size and have financial rating acceptable to the City's Risk Manager. The form of the performance bond shall be subject to approval by the City Attorney.
3. The security shall remain in effect until all of the secured conditions have been performed to the satisfaction of the Director.
4. Security required in compliance with this Section shall be payable to the City.

### B. Release of security. Upon satisfactory compliance with all applicable provisions of this Section, the security deposit shall be released.

### C. Failure to comply.

1. Upon failure to perform any secured condition in a timely manner, the City may execute the condition, or cause it to be done, and may collect from the applicant, and surety in case of a bond, all costs incurred, including administrative, engineering, legal, and inspection costs.
2. The unused portion of the security, if any, shall be refunded to the applicant after deduction of the costs recoverable by the City of the work.

3. ~~To the extent that the Director can demonstrate that the applicant willfully breached an obligation in a manner that the applicant knew, or should have known, would create irreparable harm to the City, the entire amount of the bond or deposit may be withheld.~~
4. ~~The Director's determination may be appealed to the Council by the applicant by filing an appeal with the City Clerk within 15 days after the decision to withhold the bond, in compliance with Chapter 20.78 (Appeals).~~

**D. Appeal.** The Director's determinations under this Section may be appealed to the Council by the applicant by filing an appeal with the City Clerk within 15 days after the decision in compliance with Chapter 20.78 (Appeals).



## 20.82.060 Recovery of Costs

~~This Section establishes procedures for the recovery of administrative costs, including staff and City Attorney time expended on the enforcement of the provisions of this Zoning Code, or any permit or approval issued in compliance with this Zoning Code, in cases where no permit is required in order to correct a violation.~~

### A. ~~Record of costs.~~

- ~~1. The Department shall maintain records of all administrative costs incurred by responsible City departments, associated with the investigation of violations and enforcement of this Zoning Code, and shall recover the costs from the property owner in compliance with this Section.~~
- ~~2. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Council.~~

- B. Notice.** ~~Upon a determination that recovery of costs is warranted for a violation of any of the provisions of this Zoning Code, the Director shall notify the record owner or any person having possession or control of the property by mail, of the existence of the violation(s), the Department's intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have. The notice shall be in a form approved by the City Attorney.~~

~~The prevailing party in any judicial action, administrative proceeding or other proceeding to revoke or change a permit or other approval shall recover the attorneys' fees and costs incurred in the following manner:~~

- A. City's election to seek recovery.** ~~The recovery of attorneys' fees and costs shall be limited to those individual judicial actions, administrative proceedings or other proceedings to revoke or change a permit or other approval in which the City elects, at the initiation of the individual judicial action or administrative proceeding, to seek recovery of its own attorneys' fees and costs;~~

- B. Limits of award.** ~~In no judicial action, administrative proceeding, or other proceeding to revoke or change a permit or other approval shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the judicial action or administrative proceeding or other proceeding; and~~

- C. Allowable fees and costs.** ~~Attorneys' fees and costs may include, but not be limited to, costs and expenses related to the use of expert witnesses incurred in the evaluation and/or prosecution of any judicial action, administrative proceeding or other proceeding in compliance with the provisions of this Chapter as well as City staff time, calculated at hourly rates as established by resolution of the Council, associated with the investigation of violations and enforcement of this Zoning Code.~~

***Bluffs & Canyons***

Based upon the ongoing dialog and direction regarding bluffs and the draft code provisions, staff has restructured the draft bluff and canyon development regulations (Attached). Additionally, staff has prepared exhibits showing proposed development areas for Buck Gully and Morning Canyon (Attached). Staff is preparing exhibits depicting the extent of the development area for principal structures on oblique air photos and we will present them at the meeting.

***Draft Code***

- Subsection A: Applicability (no change)
- Subsection B: Defines three Development Areas and identifies allowable structures within each area (new)
- Subsection C: Applies the Development Areas to specific geographic areas as identified in the table (new). Standards for bluffs will be added based upon prior input from the Committee.
- Subsection D: Establishes provisions for encroachments, alterations, maintenance and reconstruction of structures (new)
- Subsection E: Establishes provisions for adjustment of the development areas (change in standards for increased development area)

## 20.xx.xxx - Development on or Abutting Bluffs and Canyons

This Section provides standards to protect and enhance, where feasible, public views and the scenic and visual qualities of identified bluffs and canyon slopes and to ensure public safety by designing and siting development appropriately.

- A. Applicability.** This Section applies to lots that abut or contain bluffs or canyons as depicted in the Bluff and Canyon Properties Map (Figure xx) in Part 8 (Maps).
- B. Development areas defined.** Each lot shall be divided into two or more development areas for the purpose of siting and regulating development.
- 1. Development Area A - Principal and accessory structures.** Area A allows for the development and use of principal and accessory structures when in conformance with the Zoning Code. Accessory structures allowed in Areas B and C are permitted within Area A.
  - 2. Development Area B - Accessory structures.** Area B allows for the development and use of detached accessory structures when in conformance with other provisions of the Zoning Code. Principal structures are prohibited within Area B. Buildings or structures shall not exceed 12 feet in height from finished grade. Buildings shall not exceed 400 square feet in total area. Impervious surfaces shall not exceed 50%. Retaining walls shall not exceed 12 feet in height from finished grade. Retaining walls shall be horizontally separated by a distance equal to the height of the lower retaining wall (see figure XX). Accessory buildings shall be setback a minimum of 12 feet from retaining walls below. Accessory structures allowed in Area C are permitted within Area B.
  - 3. Development Area C – Limited accessory structures.** Area C allows for the development and use of limited accessory structures when in conformance with other provisions of the Zoning Code. Permitted accessory structures are: fences, stairways with protective guardrails when required by the Building Code, trails, benches, drainage devices, utilities, landscaping/irrigation systems and similar structures. Principal and other accessory structures not specifically listed are prohibited within Area C.
- C. Location of development areas.** Development areas defined in Subsection B are applicable to the following geographic areas:

<i>Bluffs</i>				
<i>Geographic Areas</i>	<i>Area A</i>	<i>Area B</i>	<i>Area C</i>	<i>Additional Regulations</i>

<b>Canyons</b>				
<b>Geographic Areas</b>	<b>Area A</b>	<b>Area B</b>	<b>Area C<sup>(1)</sup></b>	<b>Additional Regulations</b>
Upper Buck Gully East	100 feet from the front property line	Area not included within Area A or Area C	50 feet from rear property line	None
Upper Buck Gully West	100 feet from the front property line	Area not included within Area A or Area C	50 feet from rear property line	500-540 Hazel Drive: Area A is 75 feet from the front property line
Lower Buck Gully East	100 feet from the front property line	Area not included within Area A or Area C	75 feet from rear property line	None
Lower Buck Gully West	100 feet from the front property line	Area not included within Area A or Area C	75 feet from rear property line	312-354 Hazel Drive: Area A is depicted on Figure XX in Part 8
Morning Canyon	100 feet from the front property line	Area not included within Area A or Area C	50 feet from rear property line	342 Morning Canyon: Area A is depicted on Figure XX in Part 8

<sup>(1)</sup> If Area A overlaps Area C, Area A shall prevail.

### **C. Encroachments, Alterations, Maintenance and Reconstruction**

- 1. Encroachments.** Balconies, bay windows, eaves, architectural features and shading devices attached to principal or accessory structures may encroach from Area A into Area B without limitation provided they do not require ground support. Balconies, bay windows, eaves, architectural features and shading devices attached to principal or accessory structures may encroach from Area A or Area B into Area C provided they do not require ground support and encroach no further than 5 feet into Area C and comply with any required minimum setback provision.
- 2. Alterations and Maintenance.** Structural and non-structural alterations, maintenance, repairs, and retrofits of existing lawfully established structures are permitted without limitation.
- 3. Additions.** Additions or expansions of existing lawfully established principal or accessory structures that are not permitted within a particular development area are prohibited.
- 4. Reconstruction.** Reconstruction or replacement of any portion of existing lawfully established principal or accessory structures that encroach within Area B or Area C is permitted provided the Planning Director finds that the replacement or reconstruction substantially conforms to the existing structure being replaced or reconstructed.

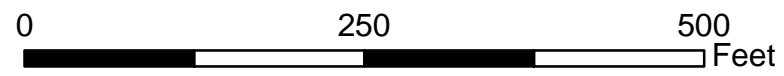
**D. Adjustment of development limits.**

1. **Minor adjustment of development area.** Where a development area is established by a specific map exhibit contained within Part 8, the Planning Director may administratively adjust the boundary when the strict application of a development area based upon the graphic exhibit creates a circumstance contrary to the intent and purpose of this Section.
2. **Reduced development areas.** A bluff or canyon development areas shall be reduced whenever necessary to:
  - a. Ensure safety and stability against slope failure (i.e., landsliding) for the economic life of a development. At a minimum, the development area shall be adjusted to ensure a slope stability factor greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; and
  - b. Ensure that the principal structures are safe from hazards due to erosional factors for the economic life of the building.
3. **Increased development areas.** A bluff or canyon development areas may be increased through the approval of a Site Development Permit when all of the following conditions exist:
  - a. The increased bluff or canyon development area ensures a slope stability factor safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; and
  - b. The increased bluff or canyon development area will provide adequate protection from erosion factors for the economic life of the development, and
  - c. The increased bluff or canyon development area is within the predominant line of existing development unless the increase development area is more protective of bluff or canyon resources and development minimizes landform alteration.
  - d. The increased bluff or canyon development area protects or enhances public views, avoids impacts to sensitive habitat areas and is not otherwise detrimental to the community.





Buck\_Gully\_South\_Alternatives.mxd April/2009



Buck Gully (South of PCH)  
Development on or Abutting Bluffs and Canyons

- 20 ft Contour Interval
- Area A - 100 ft from front PL, unless noted on map
- Area B - Remaining area outside of Area A and C
- Area C- 75 ft from rear PL





Buck\_Gully\_South\_Alternatives.mxd April/2009

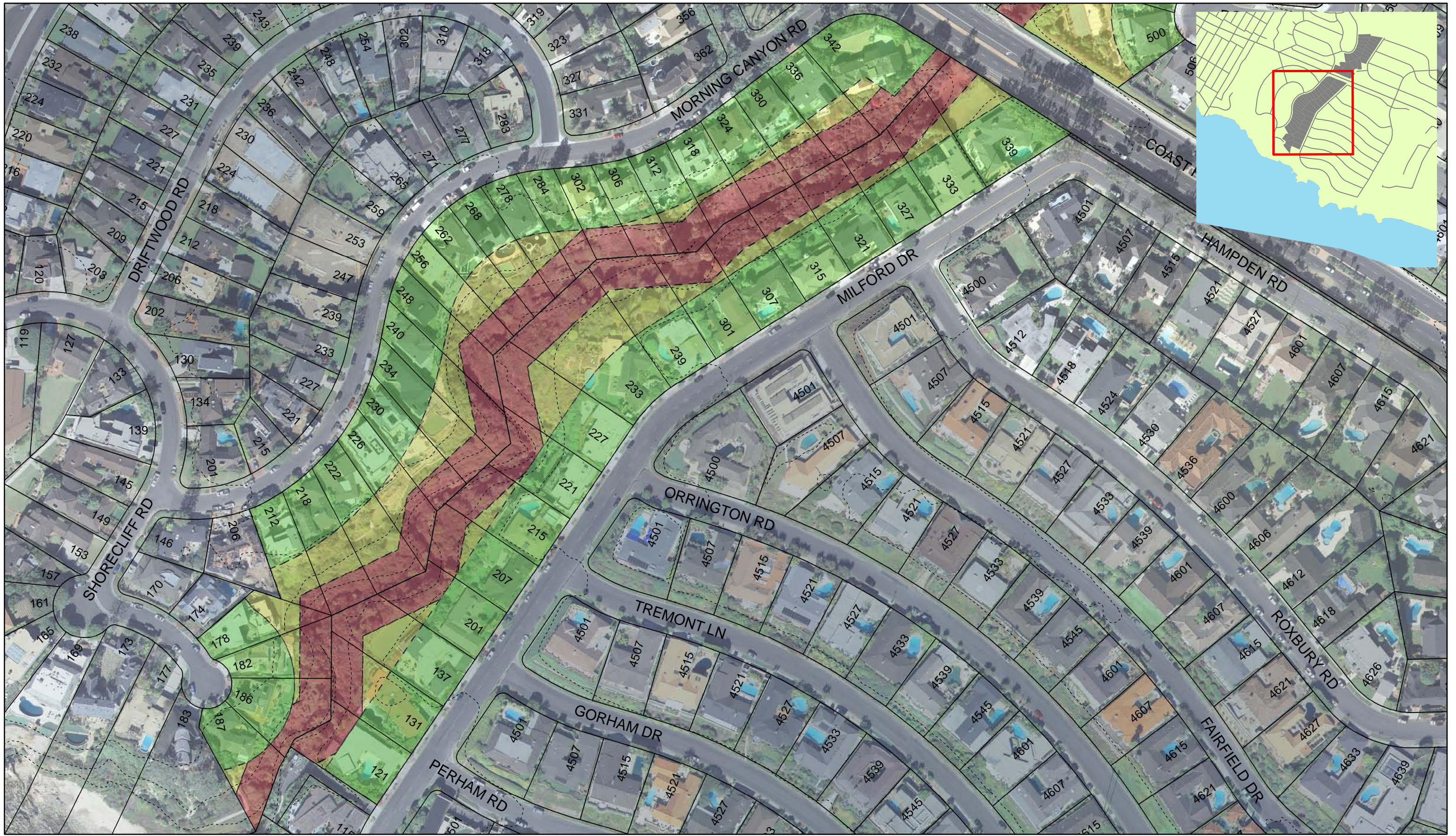


0 250 500 Feet

# Buck Gully (North of PCH) Development on or Abutting Bluffs and Canyons

- 20 ft Contour Interval
- Area A - 100 ft from front PL, unless noted on map
- Area B - Remaining area outside of Area A and C
- Area C - 50 ft from rear PL





Morning\_Canyon\_South\_Alternative1 April/2009



0 250 500 Feet

# Morning Canyon (South of PCH)

Development on or Abutting Bluffs and Canyons

- 20 ft Contour Interval
- Area A - 100 ft from front PL, unless noted on map
- Area B - Remaining area outside of Area A and C
- Area C - 50 ft from rear PL





Morning\_Canyon\_North\_Alternative1 April/2009



0 250 500 Feet

# Morning Canyon (North of PCH)

Development on or Abutting Bluffs and Canyons

- 20 ft Contour Interval
- Area A - 100 ft from front PL, unless noted on map
- Area B - Remaining area outside of Area A and C
- Area C - 50 ft from rear PL



City of Newport Beach  
REVISED ZONING CODE SCHEDULE  
April 15, 2009

The schedule has been adjusted to include Committee review of the second public review draft prior to the release of the third (Planning Commission) public review draft. The schedule also includes three tentative Committee meetings. If needed, these meetings will be used to obtain policy direction on code matters, such as inclusionary housing, or for the Committee to review projects other than the zoning code.

GP/LCP Committee Review Meetings:

April 29, May 13 and 27 (If Needed)

Possible Agenda Items:

- Bluff and Canyon Development Regulations con't.
- Environmental Study Areas
- Inclusionary Housing Ordinance
- Balboa Island Regulations
- Review of Public Comments
- Miscellaneous remaining items needing policy direction

Release of Second (Committee Review #2) Public Draft: June 12, 2009

Committee Review of #2 Public Draft:

Meeting No. 1, June 24

Meeting No. 2, July 8

Release of Third (Planning Commission) Public Draft:

July 31

Release of CEQA document:

August 14

Public Outreach/Harbor Commission:

August 14-Sept. 11

- Harbor Commission
- Restaurant Association
- Design Community
- Bluff and Canyon Property Owners

Planning Commission Hearings Begin:

September 16